IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 32252 of 2007(M)

PETITIONER:

ALI AKBAR K.K., S/O MOIDEENKUTTY,
KALLERIKKATT HOUSE, THRIPRANGODE POST,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
MALAPPURAM, COLLECTORATE,
MALAPPURAM.

2. THE REVENUE DIVISIONAL OFFICER,
TIRUR, MALAPPURAM DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
TIRUR POLICE STATION,
TIRUR, MALAPPURAM DISTRICT.

BY GOVT. PLEADER MR. I.V. PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32252 OF 2007 M
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Dated this the 5th November, 2007

J U D G M E N T

Ext. P4 is the order under challenge. Proceedings were initiated against the petitioner's vehicle bearing registration No. KL-55A/1934 and that culminated in Ext. P4 order of the District Collector.

2. From a reading of Ext. P4 it is evident that the allegation was that there was an attempt to load river sand, that on knowing that the police party are arriving, the vehicle was sped away and that the vehicle was intercepted later and proceedings were initiated. The order does not say that there was actual loading of river sand or transportation of the same.

3. Despite this, petitioner has been found to have violated Rule 29(8) of the Kerala Protection of River

Banks & Regulation of Removal of Sand Rules, 2002 and on that finding, the value of the vehicle of Rs. 35,000/- is ordered to be realised and Rs.25,000/- is imposed as fine. It is this order that is under challenge.

4. The main contention raised by the petitioner is that in the absence of actual transportation of river sand, he could not have been levied the value or fine in terms of the powers conferred on the District Collector. It is also stated that Rule 29(8) which is found to have been violated by the petitioner is totally alien to the facts of the case.

5. I have gone through Ext. P4 order and I am inclined to agree with the learned counsel for the petitioner that all that is found is that there was an attempt on the part of the vehicle for loading of river sand. Rule 29(8) which is found to have been violated by the petitioner only provides that those who purchase river sand shall obtain a pass and keep the same and shall not transport or keep the sand at any place, without the said pass. On the allegations that have raised against the petitioner this rule is not

attracted at all.

6. Even otherwise, in the absence of a finding that there has been loading and transportation of river sand, Rule 27 is totally inapplicable. In view of this, Ext. P4 proceedings is totally unsustainable and the said order is liable to be quashed and I do so. Any deposit that is made by the petitioner shall necessarily be released. The writ petition is allowed.

ANTONY DOMINIC
JUDGE

jan/-